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SEP 12 2012

Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC	)	EB Docket No. 11-71 File No. EB-09-IH-1751 FRN: 0013587779
Participant in Auction No. 61 and Licensee of Various Authorizations in the Wireless Radio Services Applicant for Modification of Various Authorizations in the Wireless Radio Services;	)	
Applicant with ENCANA OIL AND GAS (USA), INC.; DUQUESNE LIGHT COMPANY; DCP MIDSTREAM, LP; JACKSON COUNTY RURAL MEMBERSHIP ELECTRIC COOPERATIVE; PUGET SOUND ENERGY, INC.; ENBRIDGE ENERGY COMPANY, INC.; INTERSTATE POWER AND LIGHT COMPANY; WISCONSIN POWER AND LIGHT COMPANY; DIXIE ELECTRIC MEMBERSHIP CORPORATION, INC.; ATLAS PIPELINE—MID CONTINENT, LLC; DENTON COUNTY ELECTRIC COOPERATIVE, INC., DBA COSERV ELECTRIC; AND SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY	)	Application File Nos. 0004030479, 0004144435, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, 0004636537, and 0004604962
For Commission Consent to the Assignment of Various Authorizations in the Wireless Radio Services	)	

To: Marlene H. Dortch, Secretary
Attn: The Honorable Richard L. Sippel, Chief Administrative Law Judge

REPLY TO GENERAL OBJECTIONS

Maritime Communications/Land Mobile, LLC (Maritime), hereby offers replies to the *General Objections to Maritime's First Draft Glossary* ("*Objection*"), filed on August 28, 2012, by Envrionmentel, LLC; Intelligent Transport and Monitoring Wireless, LLC, and Verde Systems, LLC (which collectively refer to themselves as "SkyTel-O").

A. Introduction

1. SkyTel-O alleges a violation of a directive in the Presiding Judge's *Order* (FCC 12M-39; rel. Aug. 7, 2012) that "Maritime, with input from ... Havens, shall prepare the first

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draft" of the glossary. Maritime interpreted the reference to "Havens" in the *Order* to mean, collectively, the "Petitioner Parties" in this proceeding, namely, Environmentel, LLC; Intelligent Transportation and Monitoring Wireless, LLC; Skybridge Spectrum Foundation; Telesaurus Holdings GB, LLC; Verde Systems, LLC; V2G LLC; and Warren C. Havens (who is the controlling principal of each of these entities).[1]

2. Maritime in fact received and considered the limited substantive input offered by Mr. Havens—although undersigned counsel for Maritime declined to deal directly with him. Maritime communicated directly with counsel for SkyTel-O, seeking input from any and all of the Havens entities. SkyTel-O now asserts, however, that Maritime's insistence on dealing with Mr. Havens only through legal counsel violated the *Order*. This objection is entirely without merit.

B. Factual Counterstatement

3. As recited in the *Objection*, Mr. Havens sent an email to counsel for Maritime offering various suggestions for the glossary and asking that a proposed draft be sent by August 13, 2012. *See* Attachment 1, hereto.[2] In response to that email, and later that same day, counsel for Maritime sent a message to counsel for SkyTel-O, advising that he would not be dealing with Mr. Havens directly, but that he would take under consideration the suggestions offered in the

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[1] These parties have been collectively referred to at times as the "Petitioner Parties" (because the basis for their standing is having protested assignment applications also designated in this hearing), or as the "Havens Parties" (because Warren C. Havens is the controlling principal of these entities). The Petitioner Parties have also collectively referred to themselves as the "SkyTel Parties," although the basis for that designation is unclear. More recently, the Petitioner Parties unilaterally divided themselves into two groups: (1) Envrionmentel, LLC; Intelligent Transport and Monitoring Wireless, LLC, and Verde Systems, LLC (collectively called "SkyTel-O"), and (2) Warren C. Havens; Skybridge Spectrum Foundation; Telesaurus Holdings GB, LLC; and V2G LLC (collectively called "SkyTel-H").

[2] In the *Objection*, SkyTel-O selectively includes only a small portion of the email communications related to this matter. Maritime has made a good faith effort to compile all the pertinent email exchanges and appends copies hereto as Attachments 1 through 13.

Havens email and that he would make every effort to circulate a draft by the requested August 13, 2012, date. *See* Attachment 2. There was no immediate response to this message.[3]

4. On August 13, 2012, counsel for Maritime sent a message to counsel for SkyTel-O, stating that he would not be able to make the targeted August 13 deadline, but would circulate a draft as early as possible the next day. *See* Attachment 5. The next morning, a proposed first draft was circulated. *See* Attachment No. 6. In a portion of the transmitting email directed particularly to counsel for SkyTel-O, Maritime stated that it had made a good faith effort to take into account the substantive suggestions in Mr. Havens's August 8, 2012, email and gave its explanation for not including most of those suggestions. Counsel for Maritime also explained some of the reasons for not dealing directly with Mr. Havens as follows:

> First, [Mr. Havens] is under order from the Judge to obtain licensed counsel and to cease acting pro se. Second, ethical rules preclude counsel for one party in a matter to communicate directly with another party in the absence of that party's counsel. Third, even if direct communication were otherwise deemed ethical here (either due to Mr. Havens's self-assigned role of pro se counsel or due to some express or implied waiver of the ethical restriction), I am still not able to deal directly with him because of his history of indefatigable litigiousness and his repeated threats to bring "sanctions" against me. I understand that, as of this time, you officially represent only some of the Havens entities. Nevertheless, I submit that my position does not unduly prejudice Mr. Havens or the other entities because (a) the interest of him and the other entities is perfectly aligned with those of the entities you do represent, and (b) Mr. Havens is choosing to ignore or defy the ALJ's order on representation.

See Attachment 6.[4] Maritime made clear that it would "nonetheless be happy to consider any further comments." *Id.* But neither SkyTel-O nor any other Petitioner Party to date has offered

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[3] Mr. Havens sent a lengthy and rambling email, which to the best it could be deciphered, did not really address the glossary, but ranted about a number of unrelated matters. It was also addressed to Dennis C. Brown, who also represents Maritime, albeit not in this hearing, and most of the jeremiad vaguely asserted some sort of impropriety of dual representation. *See* Attachment 3. Nonetheless, insofar as this had any potential relevance to the glossary matter, it was forwarded to counsel for SkyTel-O with the following explanation: "I am neither refusing to deal with the SkyTel parties nor refusing to consider their input on the glossary. I am simply saying I will only deal with them through legal counsel." Counsel for SkyTel-O replied that he understood Maritime's position, was not in a position to respond, but homed to do so soon. A copy of the pertinent email exchange is appended hereto as Attachment 4.

any substantive critique of any of the drafts of the glossary.[5] Even now, although its pleading is styled as "General Objections," SkyTel-O offers no specific objections, but only a nebulous reference to the possible submission of objections at some unspecified date in the future.

C. Legal Response

5. Any number of things could be argued in response to the *Objection*, but Maritime will limit itself to three points: (a) Sky-Tel-O lacks standing, (b) Maritime complied with the *Order*, and (c) Havens and the Petitioner Parties remain in blatant violation of the Presiding Judge's order directing him to obtain licensed legal counsel.

(1) SkyTel-O Lacks Standing to Object.

6. SkyTel-O asserts that Maritime was obliged to take input from and deal with Mr. Havens directly, as an individual, distinct from the other Petitioner Parties. It thus contends that, in opening lines of communication to counsel for three Petitioner Party entities controlled by Mr. Havens, Maritime failed to comply with the *Order*. Indeed, SkyTel-O attempts to draw a sharp legal distinction between itself versus Mr. Havens and the so-called SkyTel-H entities:

> Maritime groups these legally distinct entities under the umbrella of Mr. Havens. However, undersigned counsel only represents the identified SkyTel-O entities. Undersigned counsel does not represent Mr. Havens. While the interests of the SkyTel-O entities, Mr. Havens, and the other parties may be aligned in some instances, in general, they have different objectives in the proceeding.

Objection, at unnumbered pages 3-4.[6]

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[4] Counsel for SkyTel-O responded for the first time in an email later that afternoon, stating that he did not represent Mr. Havens personally or the SkyTel-H entities, and asked that Maritime communicate directly with Mr. Havens. *See* Attachment 7. But this did not resolve the stated reasons for Maritime's inability to deal directly with Mr. Havens.

[5] Counsel for SkyTel-O contacted counsel for Maritime on the morning of August 15, 2012, inquiring about any "deadline" for providing comments on the draft. Even at that late date, counsel for Maritime offered to be as accommodating as possible. *See* Attachment No. 10, hereto. Still, no substantive comments were ever forthcoming.

7. But this line of reasoning cuts against the *Objection*. If the interests of SkyTel-O and Mr. Havens are so utterly separate and distinct as claimed, then SkyTel-O has no standing or authority to lodge the *Objection*. The Havens parties cannot have it both ways. Mr. Havens and SkyTel-O cannot claim that that they are absolutely distinct (based on alleged but unstated "different objectives") when it comes to providing input on the draft glossary, but then turn around and claim that their interests are sufficiently aligned that SkyTel-O may lodge objections based on Mr. Haven's alleged exclusion from the glossary process.[7]

(2) Maritime Complied With the *Order*.

8. Maritime reasonably interpreted the reference to "Havens" in the order to mean, collectively, Mr. Havens and the Petitioner Parties of which he is the controlling principal, and not a restriction to only Mr. Havens as an individual. In any event, Mr. Havens was not prejudiced. Counsel for Maritime simply stated that he would not deal directly with Mr. Havens. This did not prevent legal counsel from discussing and negotiating the draft on behalf of Mr. Havens. More importantly, it did not prevent Mr. Havens from offering input on the draft. Although counsel for Maritime did not respond directly to Mr. Havens's August 8 email, for example, he clearly considered it and responded through counsel. There was therefore no basis

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[6] SkyTel-O does not deign to disclose just what these "different objectives" are, but it does not matter. Each of the Mr. Havens and each of SkyTel entities were "made parties ... in [their] capacity as a petitioner to one or more of the [assignment] applications" also designated for hearing. It is absurd to suggest that the Presiding Judge and the other parties are obliged to apply different standards and procedures to each of these entities based on unilaterally-asserted "different objectives" that have been neither identified nor explained, much less justified. Moreover, whatever these alleged "different objectives" may be, it is utterly inconceivable that they diverge on the issue of how certain AMTS terms should be defined in a glossary.

[7] In reality, Mr. Havens knows that the Presiding Judge will not seriously entertain an objection that does not come through counsel. He is thus demonstrating his contempt for both the judge and the process, by using SkyTel-O's attorney as counsel when it suits his purposes, and otherwise ignoring the outstanding order directing him to obtain counsel when it does not. It is just such a contemptuous attitude that recently prompted a federal district court to imposed Rule 11 sanctions on one of Mr. Haven's entities, Telesauraus VPC, LLC. *See* Attachment 14.

for assuming that further input would not have been likewise considered, but no such input was received, neither directly from Mr. Havens nor from counsel for him or one of the Petitioner Parties. Rather, Mr. Havens and all of the Petitioner Parties kept their collective counsel and, insofar as the substance of the glossary is concerned, continue to do so. Mr. Havens had every opportunity to give input, and Maritime complied with the *Order*.

(3) Havens and SkyTel-H are In Continuous and Contemptuous Violation of the Presiding Judge's *Order* Regarding Legal Representation.

9. Warren Havens and the Petitioner Parties have been repeatedly directed to obtain and appear through licensed legal counsel. See, e.g., *Order* (12M-07; rel. Jan. 12, 2012); *Memorandum Opinion and Order* (FCC 12M-16; rel. March 9, 2012). In the latter ruling the Presiding Judge expressly rejected Havens's contention that he should be permitted to act pro se on behalf of himself and the SkyTel Parties. Havens himself has admitted that he is not competent to so act. In a January 23, 2012, email message addressed to, inter alia, Marlene Dortch and Richard L. Sippel, a printout of which was apparently filed in this docket, Havens wrote: "I do not believe I should substantively address this matter: I am not a lawyer, this is a formal hearing, and for other reasons. In addition, SkyTel's other legal counsel do not practice in FCC law matters." *See* Exhibit 15. And yet, he has stubbornly refused to comply with the repeated orders of the Presiding Judge to retain proper legal counsel for all of the entities.

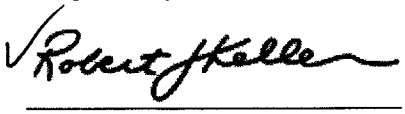
10. It appeared at one point that Havens was attempting to assert a right of self-representation for himself personally, as opposed to the business entities, but if that were his position his subsequent actions belie any faith motive. Havens arranged for the retention of legal counsel for three of the Petitioner Parties, namely SkyTel-O, but has continued in unabashed defiance of the Presiding Judge's repeated orders, to act pro se on behalf of not only himself, but for the other three Petitioner Party entities as well. As already discussed above, insofar as their

standing and party status in this hearing is concerned, there is no distinction between Mr. Havens and any of the Petitioner Parties. That they may have differing objectives and agendas of their own, which they have alluded to but neither disclosed nor explained, does not entitle them to differing treatment in this hearing proceeding.

11. Moreover, even if he were to belated comply with the orders and obtain legal counsel for all of the SkyTel entities, Mr. Havens may not be permitted to continue acting pro se on his own behalf. The Commission has made clear that "bifurcated" representation—in which an individual whose personal interests are aligned with those of an entity he controls seeks to act pro se on his own behalf while having legal counsel represent the entity—is not permitted in FCC practice. *See Black Television Workshop of Los Angeles, Inc.*, 7 FCC Rcd 6868, 6869-6870 (1992). The Petitioner Parties have been and remain in continuous violation of this principal as well as the Presiding Judge's orders and directives in this case.

12. In addition to the sound legal basis for this position, there are also important policy considerations. Permitting representation of the entities which Havens controls to continue to be divided among separate counsel, with Warren Havens also representing himself, can result only in continued disorder, confusion, risk of unethical behavior, petty disputes, delay, waste of time by all parties, and waste of the Commission's scarce administrative resources. It is also unfair to Maritime to have to fend off multiple Havens entities, each having the same legally cognizable interest in this matter, but nevertheless using the ruse of multiple representation to obtain multiple bites at the apple.

Respectfully Submitted,



Robert J. Keller, Counsel for Maritime Communications/Land Mobile, LLC

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PO Box 33428
Washington, D.C. 20033

Email: rjk@telcomlaw.com
Telephone: 202.656.8490
Facsimile: 202.223.2121

Dated: September 12, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September, 2012, I caused copies of the foregoing pleading to be served, by U.S. Postal Service, First Class postage prepaid, on the following:

Pamela A. Kane, Esquire
Brian Carter, Esquire
Enforcement Bureau
Federal Communications Commission
445 Twelfth Street NW – Room 4-C330
Washington DC 20554

Jack Richards, Esquire
Wesley K. Wright, Esquire
Keller and Heckman LLP
1001 G Street NW– Suite 500 West
Washington DC 20001

Robert J. Miller, Esquire
Gardere Wynne Sewell LLP
1601 Elm Street– Suite 3000
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Albert J. Catalano, Esquire
Matthew J. Plache, Esquire
Catalano & Plache, PLLC
3221 M Street NW
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Robert H. Jackson, Esquire
Marashlian & Donahue, LLC
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McLean, VA 22102

Warren C. Havens
& SkyTel Companies
2509 Stuart Street
Berkeley CA 94705

Howard Liberman, Esquire
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Jeffrey L. Sheldon, Esquire
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Washington, D.C. 20005

/Robert J. Keller/

Robert J. Keller

August 8, 2012, Email from Warren Havens to Robert J. Keller

From: Warren Havens [mailto:warren.havens@sbcglobal.net]
Sent: Wednesday, August 08, 2012 8:50 AM
To: Robert J. Keller
Cc: Pamela Kane; Brian Carter; Jimmy Stobaugh
Subject: Fw: EB #11-71 (FCC-12M-39)

Mr Keller,

1. This Order provides that "Maritime...SHALL Prepare.... with input from Pinnacle and Havens..."
In this regard:

Request 1: Please send your prepared draft to me and Mr. Stobaugh before the end of Aug of 13. Since the date Martime is to submit this to the Judge is Aug. 16, that would provide a few days for "input from ... Havens."

In an attempt to progress this, and to be in a position to demonstrate to the Judge my attempts, I suggest a few things in advance (not being comprehensive, and reserving the right to amend):

(i) This Order refers to "issues being litigated in this case." In the HDO, FCC 11-64, there are issues formally stated as issues at the end. But there area also "issues" being contested in the Hearing, if I understand what the Judge means here: he gives one "particular category" in this regard. Another item in this category, I believe, is item '2' ("Also, as you...") below and related matters.

(Until that is resolved, it is not clear what is Maritime, if it is in bankruptcy or as Mr. Brown writes, also not in bankruptcy, who has authority in this Hearing to represent any Maritime including as to this Glossary Order matter, etc.)

(1) The FCC rules, in Parts 1, 20 and 80, have various relevant definitions that apply to matters in this Hearing including disputed discovery. Also, FCC license applications used by Matitime to obtain its licenses, and for other licensing actions, have terms and instructions as to the terms, including in the certifications, and also cite to non-FCC federal law, under Title 18 (that has terms that apply).

(2) FCC relevant orders give further effective definitions of relevant terms in language context. These include the Orders I cited to the Judge in my statements in this Hearing.

(3) Delaware law has relevant statutes and definitions relating to Delaware LLCs (Maritime asserts to be a Delaware LLC) and it alleged owner, SJR Partnership (which Maritime asserts to be a Delaware limited partnership, as I recall).

(4) Court decisions on appeals of FCC orders have certain definitions or language uses that may be relevant.

(5) Maritime took positions in ligation opposing various SkyTel entities, and prevailed to date on some procedural dismissals of SkyTel claims by representations to the court as to the validity of its licenses, using terminology to do that. I believe that SkyTel may properly suggest to the Judge that Maritime should be deemed judicially estopped form taking contrary positions (on legal and equitable basis). Maritime is aware of those cases and position. I believe the same applies to Maritime representations to Pinnacle and other applicants listed in the HDO, FCC 11-64 caption, as well as its representations as to license-holders vs. stations in operation (and similar factual assertions) in this loan agreement and UCC collateral statements.

(6) Regarding Maritime's assertions of having spectrum "leases," I think you should define those, and explain what is and is not included. A lease, to be accepted in bankruptcy, has to have, I believe, clear definition of what is being leased including the geography. Regarding the Maritime assertion of not being "privy," I think you should explain what you mean by that critical term and if that is the representation of John Reardon and all others in officer or other key positions in Maritime DIP or Maritime. Likewise, for other terms you and Maritime use before the FCC for defense and offense against SkyTel (and "Havens," which you clearly attempt to have the judge accept as non different, discussed more below).

2. Also, as you know (since you were copied), Mr. Dennis Brown (and Sandra Depriest) recently informed the Wireless Bureau Chief in his Aug 3, 2012 Opposition to a pleading I filed (re File No. 0003990344 etc), that Maritime is still operating in parallel to Martime DIP (Debtor in Possession). In that case, it seems to me that Maritime should have its counsel, Dennis Brown, explain this this Hearing about the current position and operations of Maritime (the Martiime that is not Maritime DIP). Regarding this same FCC proceeding that Mr. Brown appears for both of these Maritime entities, you instructed the Judge in a footnote to one of your filings just before the last prehearing, as to the alleged irony of the subject Havens personally-held 220 MHz licenses, which you and Brown misrepresent to the Wireless Bureau Chief.* You are counsel for Maritime DIP and you know that Mr. Brown is counsel for Maritime (not DIP) that is active before the FCC on licensing matters, and explaining this is relevant to the Judges recent Orders as to factual discovery on the issues of: what is the real Maritime entity, who is really in control and takes actions for the entity or the shell, etc.

Request 2. Thus, please address this to me as you choose. If you do not, then I plan to note this attempt to the Judge and present what I believe to be relevant documents and facts.

* But this footnote was helpful in this Hearing in that Maritime points to why the Commission designated me as an individual party in the HDO, FCC 11-64. I personally held AMTS license applications (pending on appeal at all relevant times) and 220 MHz licenses in same markets as Maritime held AMTS licenses, and that was recognized by the FCC as giving me legal standing to challenge Maritime in the "petitioners" petitions cited in the HDO that were the basis of the HDO and this Heating. I was stated as a party in FCC decisions on those petitions. Your assertions to the Judge in this regard-- that Havens is listed as a party in the HDO since he is an officer and owner of the "Skybridge" legal entities, and related -- are misleading and incorrect, and I believe you and the persons you represent must know that well. Your practice of defining all of the SkyTel legal entities as "Havens" is improper (and the facts you know show that), but you should be estopped from, at the same time or later, arguing as you do that "Havens" is only an officer in these entities and thus, cannot act pro se.

Request 3. Thus, I also request that you correct matters I noted in the preceding paragraph in response email to me. If you don't, then I plan to inform the Judge that I made this attempt. A "party" is a term for the called-for glossary but in any case, I believe that you should correct what I note to decrease confusing diversion from the factual discover that is needed.

Thank you,
Warren Havens

ATTACHMENT 2
August 8, 2012, Email from Robert J. Keller to Robert H. Jackson

From: Bob Keller [mailto:rjk@TelComLaw.com]
Sent: Wednesday, August 08, 2012 3:21 PM
To: rhj@commlawgroup.com
Cc: Pamela S. Kane; Brian.Carter@fcc.gov; Matthew J. Plache; Albert J. Catalano
Subject: FW: EB #11-71 (FCC-12M-39)

Mr. Jackson,

Insofar as you represent at least some of the Havens entities in this matter, I am responding to you. I have no intention of dealing directly with Mr. Havens or his staff, and shall instead communicate through legal counsel. That having been said, I will certainly take under advisement the matters discussed in the email message from Mr. Havens (see below), and I have no problem with circulating a draft to counsel for the appropriate parties by the end August 13. I will also be happy to consider any input you may wish to offer prior to that time.

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Bob Keller < rjk@telcomlaw.com >
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, D.C. 20033-04238
202.223.2100

ATTACHMENT 3, Page 1 of 3
August 9, 2012, Email from Warren Havens to Robert J. Keller

From: Warren Havens [mailto:warren.havens@sbcglobal.net]
Sent: Wednesday, August 08, 2012 11:28 PM
To: Robert J. Keller; Dennis Brown
Cc: Pamela Kane; Brian Carter; Jimmy Stobaugh
Subject: Re: EB #11-71 (FCC-12M-39)

Mr. Keller and Mr. Brown,

I do not herein waiver any SkyTel entities' past stated positions, and reserve all rights.

First, you each act for MCLM and MCLM-DIP in FCC licensing application matters before the Wireless Bureau (WB) including after the Hearing under docket 11-71 commenced and after MCLM filed for bankruptcy. By your statements and actions before the WB and Judge Sippel, you connect the WB actions and the Hearing.

Mr. Brown,

I am copying you for reasons evident hereto. See also my comment addressed to you below.[***]

Mr. Keller,

By your email to Mr. Jackson today [which I insert it below*], I understand that you decided that you will not respond to me regarding my email below.
- If your "intention" changes, please let me know.

I disagree with your decision, and will proceed accordingly, including first, deleting the work scheduled for next week that I described to you, to review your draft and give input.

I also take the position now, unless you inform me directly otherwise at this time, that Maritime DIP and Maritime (MCLM, and MCLM-DIP) do not (as of some point in time, but at least at this time) recognize Warren Havens, myself, as a party in this Hearing. I intend to challenge that and seek remedies.
- If I am incorrect on this, please let me know at this time.

Reasons for my positions stated in the preceding paragraphs include but are not limited to the following:

- In that email from you to Mr. Jackson of today, you addressed Mr. Jackson with regard to certain legal entities he represents; however, I did not send you the email below on behalf of those entities, as is clear. I addressed you as "Havens," an individual, in accord with the subject Order cited in the subject line of this email string (the "Order").

- The Order stated "Havens." It could have but did not identify any company which I manage including any company Mr. Jackson represents. I do not believe that the Order can be deemed unclear, or amended (including by the email of Ms. Gosse of today circulated using parties' email list).

Also, it is my understanding that you represent "at least some of the "Reardon-Depriest entities,[FN*] but also that Dennis Brown at the same time represents the same entities, including the non-DIP MCLM entity that acts before the FCC in tandem with the MCLM DIP. E.g., see my email below.

[* FN. By your actions, you take the position that there is no difference between a controlling officer or owner of a legal entity, and the entity, in your practice of using the term "Havens" and "Havens entities" for the actual legal entities involved that the FCC found to be different, rejecting the Reardon-Depriests assertions otherwise. While I disagree with and reject that for the SkyTel legal entities as you know, I can hold you and persons and parties you represent to you position ("take your own medicine").]

In this regard, I believe that it is clear that you and Dennis Brown bind the Readon-Depriest entities (MCLM, MCLM-DIP, the various Mobex entities, WPV, etc.) to your representation actions:
[U]nder the Communications Act, the acts or omissions of an agent or other person acting for a common carrier are deemed to be the acts or omissions of the carrier itself. See 47 U.S.C. § 217; see also Heartline Communications, Inc. 11 FCC Rcd 18487, 18494 (1996).

In the Matter of AT&T Communications, Inc.; Apparent Liability for Forfeiture, FCC 00-446, 16 FCC Rcd 438, Dec. 21, 2000.

See item "2" in first email of today, below. This email string largely concerns MCLM DIP, and you, Mr. Brown, have informed the FCC Wireless Bureau Chief that you currently, and for a long time into the past, are legal counsel to and represent before the FCC (i) MCLM DIP and (ii) MCLM. You clearly separately identify these two MCLM entities, a number of times, and use present tense as to currently representing both of these.

You, Mr. Brown, are engaging in representation of these alleged two MCLM entities at this time, in FCC licensing and other actions. As you know, your position is that you have the legal authority to represent the two MCLM entities without approval of the bankruptcy court (which you admit to the Bureau Chief do not have and have never had: shown in the bankruptcy court records also). You are filing and pursuing applications and pleadings before the Wireless Bureau (WB) for MCLM and MCLM DIP, opposing the "SkyTel" entities (again, the term "SkyTel" entities are companies I represent as President before the WB and at the Commission level, and this term also includes myself as an individual in proceedings where I state that).

For the SkyTel entities, I am concerned that you two, Mr. Brown and Mr Keller, with your clients John Reardon and the Depriests (as the ultimate persons involved in the two MCLM entities, per the evidence and admissions) (you two attorneys and said persons together, the "MCLM Persons") are attempting multiple positions before various FCC authorities, to set up a situation where the MCLM Persons can later pick some of positions, and renounce other positions, depending on the results, such as by asserting that one, or the other, of the two attorneys' actions, and/or one or the other of the two MCLM entities, was authorized, and the other was not. This concern is heightened by other evidence in FCC records I will not take time to get into here, but which the MCLM Persons have (largely their own filings, or matters served on them).

Further, for reasons indicated herein, unless you make clear to the Wireless Bureau that you, Mr. Brown, do not represent these two MCLM entities, it appears to me to be warranted to include you in communications regarding two MCLM entities, even if Mr. Keller is also stated in FCC records as representing these two MCLM entities.
- If you-- Mr. Brown and/ or Mr. Keller-- disagree with the previous sentence, please let me know.

My comments in this email with regard to the subject Order (see the email subject line) are as Warren Havens, an individual (in accord with the Order). In other comments I speak for SkyTel legal entities, or those entities in addition to myself (see the subject proceeding and action).

Sincerely,
Warren Havens

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[*] The following is pasted in here as an in-line attachment.

ATTACHMENT 4

August 9, 2012, Email exchange between Robert J. Keller and Robert H. Jackson

From: Bob Keller [mailto:rjk@TelComLaw.com]
Sent: Thursday, August 09, 2012 9:16 AM
To: 'Robert Jackson'
Cc: 'Pamela Kane'; 'Brian Carter'; 'Dennis Brown'
Subject: RE: EB #11-71 (FCC-12M-39)

No problem. Thanks.

From: Robert Jackson [mailto:rhj@commlawgroup.com]
Sent: Thursday, August 09, 2012 8:48 AM
To: rjk@telcomlaw.com
Cc: 'Pamela Kane'; 'Brian Carter'; 'Dennis Brown'
Subject: RE: EB #11-71 (FCC-12M-39)

Mr. Keller,

I have received your messages and understand your position. I am not in a position yet to respond to the specifics. I hope to be able to do so shortly.

Rob Jackson

From: Bob Keller [mailto:rjk@TelComLaw.com]
Sent: Thursday, August 09, 2012 8:44 AM
To: rhj@commlawgroup.com
Cc: 'Pamela Kane'; 'Brian Carter'; 'Dennis Brown'
Subject: RE: EB #11-71 (FCC-12M-39)

Mr. Jackson,

I am once again responding to you rather than directly to Mr. Havens. The point of my prior email was not to dispute the status of Mr. Havens and the SkyTel entities as parties to the proceeding, but rather that the Presiding Judge has correctly (and repeatedly) ruled that these parties must be represented by licensed legal counsel. I am neither refusing to deal with the SkyTel parties nor refusing to consider their input on the glossary. I am simply saying I will only deal with them through legal counsel. As for the other ramblings in this message, I will respond to them if it seems appropriate after I have had the opportunity to decipher them.

--
Bob Keller < rjk@telcomlaw.com >
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, D.C. 20033-04238
202.223.2100

ATTACHMENT 5

August 13, 2012, Emails from Robert J. Keller to Counsel for Pinnacle and SkyTel-O

From: Bob Keller [mailto:rjk@TelComLaw.com]
Sent: Monday, August 13, 2012 2:55 PM
To: rhj@commlawgroup.com
Cc: Matthew J. Plache (mjp@catalanoplache.com); Albert J. Catalano (ajc@catalanoplache.com)
Subject: RE: EB #11-71 (FCC-12M-39)

Bob, Al, and Matt,

I will do my best to circulate my first cut at the glossary by the end of the day or later this evening, but I just wanted to advise you that it may slide until early tomorrow morning.

--
Bob Keller < rjk@telcomlaw.com >
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, D.C. 20033-04238
202.223.2100

From: Bob Keller [mailto:rjk@TelComLaw.com]
Sent: Tuesday, August 14, 2012 9:53 AM
To: 'rhj@commlawgroup.com'; 'Albert J. Catalano'; 'Matthew Plache'
Cc: 'Brian Carter'; 'Charles A. Zdebski'; 'Eric Schwalb'; 'Gary Schonman'; 'Harry Cole'; 'Jack Richards'; 'Jeffery Sheldon'; 'Kurt DeSoto'; 'Pamela Kane'; 'Paul Feldman'; 'Robert Miller'; 'Wes Wright'
Subject: RE: EB #11-71 (FCC-12M-39)

minor correction:

>> I am directing this to you, Bob, and counsel for at least some portion of the Havens entities<<

I meant to type, *AS* counsel for …

From: Bob Keller [mailto:rjk@TelComLaw.com]
Sent: Tuesday, August 14, 2012 9:51 AM
To: 'rhj@commlawgroup.com'; 'Albert J. Catalano'; 'Matthew Plache'
Cc: 'Brian Carter'; 'Charles A. Zdebski'; 'Eric Schwalb'; 'Gary Schonman'; 'Harry Cole'; 'Jack Richards'; 'Jeffery Sheldon'; 'Kurt DeSoto'; 'Pamela Kane'; 'Paul Feldman'; 'Robert Miller'; 'Wes Wright'
Subject: RE: EB #11-71 (FCC-12M-39)

Bob, Al & Matt,

Attached is a first draft of the glossary called for in Judge Sippel's August 7 order. I am directing this to you, Bob, and counsel for at least some portion of the Havens entities, and to you Al and Matt, as counsel for Pinnacle, because the order seems to contemplate that Maritime would first take input from your respective clients and then circulate a draft to all the parties. In the interest of efficiency and expedition, however, I am also copying counsel for the other parties at this time. I am not convinced it matters in what particular order comments arrive, provided any significant unresolved disputes or disagreements are properly identified. Also, this is my first circulate draft, and I will be reviewing it in consultation with my client. I will be circulating a revised draft that will include any changes I may make in the interim plus take into consideration input I receive from the other parties.

Bob Jackson: To the extent I could understand them, I attempted in good faith to take into Mr. Havens's Aug 8 email messages. Some of his items are reflected in this draft. To the extent not, it is either because I considered them to be inappropriate for the glossary or, quite frankly, because I did not understand what was being said. As an examples of the former, Mr. Havens is urging the inclusion of definitions not relevant to Issue G (which I interpret to be the scope of the requested glossary) and/or arguments as inferences or legal conclusions to be drawn as to various matters. I will nonetheless be happy to consider any further comments you have regarding this draft.

As I advised you earlier, I will not be dealing with Mr. Havens directly. There are several reasons for this. First, he is under order from the Judge to obtain licensed counsel and to cease acting pro se. Second, ethical rules preclude counsel for one party in a matter to communicate directly with another party in the absence of that party's counsel. Third, even if direct communication were otherwise deemed ethical here (either due to Mr. Havens's self-assigned role of pro se counsel or due to some express or implied waiver of the ethical restriction), I am still not

able to deal directly with him because of his history of indefatigable litigiousness and his repeated threats to bring "sanctions" against me. I understand that, as of this time, you officially represent only some of the Havens entities. Nevertheless, I submit that my position does not unduly prejudice Mr. Havens or the other entities because (a) the interest of him and the other entities is perfectly aligned with those of the entities you do represent, and (b) Mr. Havens is choosing to ignore or defy the ALJ's order on representation.

--
Bob Keller < rjk@telcomlaw.com >
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, D.C. 20033-04238
202.223.2100

ATTACHMENT 7
August 14, 2012, Email from Robert H. Jackson to Robert J. Keller

From: Robert Jackson [mailto:rhj@commlawgroup.com]
Sent: Tuesday, August 14, 2012 1:44 PM
To: rjk@telcomlaw.com
Cc: 'Warren Havens'; 'Jimmy Stobaugh'
Subject: RE: EB #11-71 (FCC-12M-39)

Mr. Keller,

I have now communicated with Warren Havens about this issue. Judge Sippel's order concerning the glossary instructs the parties to include Mr. Havens in the process for developing a joint glossary for use in EB 11-71. While I represent several entities in which Mr. Havens has ownership interests and management responsibilities, I do not represent Mr. Havens as an individual in this proceeding. Accordingly, please direct your communications to Mr. Havens. He may or may not then include me in the process.

Rob Jackson,
Counsel for "SkyTel-O"

ATTACHMENT 8
August 14, 2012, Email from Warren Havens to Robert J. Keller

From: Warren Havens [mailto:warren.havens@sbcglobal.net]
Sent: Tuesday, August 14, 2012 1:48 PM
To: Robert J. Keller
Cc: rhj@commlawgroup.com; "'Matthew Plache'"; "'Albert J. Catalano'"; "'Brian Carter'"; "'Charles A. Zdebski'"; "'Eric Schwalb'"; "'Gary Schonman'"; "'Harry Cole'"; "'Jack Richards'"; "'Jeffery Sheldon'"; "'Kurt DeSoto'"; "'Pamela Kane'"; "'Paul Feldman'"; "'Robert Miller'"; "'Wes Wright'"
Subject: Re: RE: EB #11-71 (FCC-12M-39)

Mr. Keller,

I am copying here the persons you included in your email below.

The relevant Order simply stated that you are to deal with Havens on this Glossary matter. You refuse to do that.

In addition:

Mr. Jackson is not my attorney in the Hearing, as you know and acknowledge.
You assert that my interests are not prejudiced by not addressing me, but addressing an attorney that does not represent me.
Obviously, an individual is not the same as legal entities, nor are different legal entities the same, as you suggest ("interest of him [Havens] and the other entities is perfectly aligned with those of the entities you do represent").

You are choosing to not follow the Order by giving your interpretation, theories, and personal concerns (sanctions) of matters outside the Order.

My email to you last week with some initial information I believed relevant to the Glossary task, is not my input as called for in the Order.
I only indicated some sources I believed would be relevant to preparation of a Glossary.

You stated last week (outside this email string) that you would not deal with Havens (myself) as this Order states.
You state your reasons for that below.
In neither of those statements did you copy me.
Mr. Jackson relayed to me those statements you sent to him, as a courtesy, but since he is not my counsel in the Hearing, and he and I have no obligation for him to serve this role.

Your suggestions that I am the one interposing non-objective positions in this Hearing is not correct, but in any case is not stated in or an issue in the relevant Order.
The need for the Glossary is shown in the Hearing record: is it since you and your client will not use words and phrases that comply with FCC rules and Orders, or common meanings.

You make clear below that you believe I do not have party rights in the Hearing, since if I did, you would comply with the Order and also include me in party-circulation email. Since you do not even copy me on matters in which you take issue with my interests in this FCC Hearing (and beyond this Hearing, by suggesting falsely that all the "Havens" managed entities have the same interests, etc.), you further show Maritime's position is that Havens has no party rights in the Hearing.

- Warren Havens

ATTACHMENT 9
August 14, 2012, Emails from Robert J. Keller to all counsel

From: Bob Keller [mailto:rjk@TelComLaw.com]
Sent: Thursday, August 16, 2012 2:01 PM
To: 'rhj@commlawgroup.com'; 'Albert J. Catalano'; 'Matthew Plache'
Cc: 'Brian Carter'; 'Charles A. Zdebski'; 'Eric Schwalb'; 'Gary Schonman'; 'Harry Cole'; 'Jack Richards'; 'Jeffery Sheldon'; 'Kurt DeSoto'; 'Pamela Kane'; 'Paul Feldman'; 'Robert Miller'; 'Wes Wright'
Subject: RE: EB #11-71 (FCC-12M-39)

Attached is the penultimate draft of the glossary, to be filed later today. Also attached is a red-lined version showing changes from the last draft circulated yesterday, and an excerpt from the Federal Register showing the correct rendition of the table defining the various AMTSAs .

This iteration of the draft incorporates, to the extent Maritime was able to agree with them, input and comments received from other parties, including, the Enforcement Bureau. If there are any further comments, questions, proposed edits, etc., please get them to me as soon as possible in view of the approaching submission deadline. Thanks.

--
Bob Keller < rjk@telcomlaw.com >
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, D.C. 20033-04238
202.223.2100

From: Bob Keller [mailto:rjk@TelComLaw.com]
Sent: Wednesday, August 15, 2012 9:57 AM
To: 'rhj@commlawgroup.com'; 'Albert J. Catalano'; 'Matthew Plache'
Cc: 'Brian Carter'; 'Charles A. Zdebski'; 'Eric Schwalb'; 'Gary Schonman'; 'Harry Cole'; 'Jack Richards'; 'Jeffery Sheldon'; 'Kurt DeSoto'; 'Pamela Kane'; 'Paul Feldman'; 'Robert Miller'; 'Wes Wright'
Subject: RE: EB #11-71 (FCC-12M-39)

Current revision attached. Red-lined version shows changes from last draft circulated yesterday.

From: Bob Keller [mailto:rjk@TelComLaw.com]
Sent: Tuesday, August 14, 2012 11:12 AM
To: 'rhj@commlawgroup.com'; 'Albert J. Catalano'; 'Matthew Plache'
Cc: 'Brian Carter'; 'Charles A. Zdebski'; 'Eric Schwalb'; 'Gary Schonman'; 'Harry Cole'; 'Jack Richards'; 'Jeffery Sheldon'; 'Kurt DeSoto'; 'Pamela Kane'; 'Paul Feldman'; 'Robert Miller'; 'Wes Wright'
Subject: RE: EB #11-71 (FCC-12M-39)

Please find attached a revised and slightly edited version of the draft glossary. For your convenience, I am also including a red-lined edition showing the changes from the draft circulated earlier this morning. Thanks.

ATTACHMENT 10

August 14, 2012, Email exchange between Robert J. Keller and Robert H. Jackson

From: Bob Keller [mailto:rjk@TelComLaw.com]
Sent: Wednesday, August 15, 2012 10:31 AM
To: 'Robert Jackson'
Cc: Matthew J. Plache (mjp@catalanoplache.com); Albert J. Catalano (ajc@catalanoplache.com)
Subject: RE: EB #11-71 (FCC-12M-39)

As discussed in our telephone call, I'm flexible. The filing deadline is 7:00 PM tomorrow, so it really depends on how significant/controversial the proposed changes are. If it is minor editorial stuff, no big deal. It if is more substantive and/or disputed, we will need a little time to discuss. My intention is to incorporate whatever I reasonable can that proposed by the Havens entities and/or Pinnacle, but if there is something we can't agree on, to note it in the submission. So, the sooner I get any input, the more time we have to discuss it if there is any dispute.

From: Robert Jackson [mailto:rhj@commlawgroup.com]
Sent: Wednesday, August 15, 2012 10:09 AM
To: rjk@telcomlaw.com
Subject: RE: EB #11-71 (FCC-12M-39)

Bob,

What is your drop-dead time for any proposed changes? Thank you.

Rob Jackson

ATTACHMENT 11
August 14, 2012, Email from Robert H. Jackson to Robert J. Keller

From: Robert Jackson [mailto:rhj@commlawgroup.com]
Sent: Thursday, August 16, 2012 3:22 PM
To: rjk@telcomlaw.com; 'Albert J. Catalano'; 'Matthew Plache'
Cc: 'Brian Carter'; 'Charles A. Zdebski'; 'Eric Schwalb'; 'Gary Schonman'; 'Harry Cole'; 'Jack Richards'; 'Jeffery Sheldon'; 'Kurt DeSoto'; 'Pamela Kane'; 'Paul Feldman'; 'Robert Miller'; 'Wes Wright'
Subject: RE: EB #11-71 (FCC-12M-39)

Mr. Keller,

In accordance with the ALJ's August 7 Order, Maritime was to seek input from Warren Havens to create a first draft of the Glossary. Specifically, the Order provides

"Maritime Communications, in conjunction with other parties, shall prepare a glossary of terms pertaining to in (sic) the AMTS (Automated Marine Telecommunications System), industry the CMRS (Commercial Mobile Radio Service), industry and the WRS (Wireless Radio Services) that are necessary, helpful or useful in understanding issues being litigated in this case...Maritime, with input from Pinnacle and Havens, shall prepare the first draft to circulate among all parties for comment." (emphasis added)

Despite this direction, you have indicated that you will not work directly with Mr. Havens, a decision that is inconsistent with the August 7 Order. SkyTel-O will not be commenting on the draft Glossary unless and until Mr. Havens has been brought directly into the review process, as provided in the August 7 Order.

Robert H. Jackson
Counsel the "SkyTel-O" entities

ATTACHMENT 12
August 14, 2012, Email from Warrant Havens to Robert J. Keller

From: Warren Havens [mailto:warren.havens@sbcglobal.net]
Sent: Tuesday, August 14, 2012 1:48 PM
To: Robert J. Keller
Cc: rhj@commlawgroup.com; "'Matthew Plache'"; "'Albert J. Catalano'"; "'Brian Carter'"; "'Charles A. Zdebski'"; "'Eric Schwalb'"; "'Gary Schonman'"; "'Harry Cole'"; "'Jack Richards'"; "'Jeffery Sheldon'"; "'Kurt DeSoto'"; "'Pamela Kane'"; "'Paul Feldman'"; "'Robert Miller'"; "'Wes Wright'"
Subject: Re: RE: EB #11-71 (FCC-12M-39)

Mr. Keller,

I am copying here the persons you included in your email below.

The relevant Order simply stated that you are to deal with Havens on this Glossary matter. You refuse to do that.

In addition:

Mr. Jackson is not my attorney in the Hearing, as you know and acknowledge.
You assert that my interests are not prejudiced by not addressing me, but addressing an attorney that does not represent me.
Obviously, an individual is not the same as legal entities, nor are different legal entities the same, as you suggest ("interest of him [Havens] and the other entities is perfectly aligned with those of the entities you do represent").

You are choosing to not follow the Order by giving your interpretation, theories, and personal concerns (sanctions) of matters outside the Order.

My email to you last week with some initial information I believed relevant to the Glossary task, is not my input as called for in the Order.
I only indicated some sources I believed would be relevant to preparation of a Glossary.

You stated last week (outside this email string) that you would not deal with Havens (myself) as this Order states.
You state your reasons for that below.
In neither of those statements did you copy me.
Mr. Jackson relayed to me those statements you sent to him, as a courtesy, but since he is not my counsel in the Hearing, and he and I have no obligation for him to serve this role.

Your suggestions that I am the one interposing non-objective positions in this Hearing is not correct, but in any case is not stated in or an issue in the relevant Order.
The need for the Glossary is shown in the Hearing record: is it since you and your client will not use words and phrases that comply with FCC rules and Orders, or common meanings.

You make clear below that you believe I do not have party rights in the Hearing, since if I did, you would comply with the Order and also include me in party-circulation email. Since you do not even copy me on matters in which you take issue with my interests in this FCC Hearing (and beyond this Hearing, by suggesting falsely that all the "Havens" managed entities have the same interests, etc.), you further show Maritime's position is that Havens has no party rights in the Hearing.

- Warren Havens

ATTACHMENT 13
August 16, 2012, Email from Robert J. Keller to Robert H. Jackson

From: Bob Keller [mailto:rjk@TelComLaw.com]
Sent: Thursday, August 16, 2012 5:03 PM
To: 'Robert Jackson'; 'Albert J. Catalano'; 'Matthew Plache'
Cc: 'Brian Carter'; 'Charles A. Zdebski'; 'Eric Schwalb'; 'Gary Schonman'; 'Harry Cole'; 'Jack Richards'; 'Jeffery Sheldon'; 'Kurt DeSoto'; 'Pamela Kane'; 'Paul Feldman'; 'Robert Miller'; 'Wes Wright'
Subject: RE: EB #11-71 (FCC-12M-39)

Rob,

On August 8, the day after the judge's order, I received an email from Mr. Havens regarding this matter. On the same day, I responded to you, as counsel for at least three of the Havens entities, explaining my reasons for not dealing directly with Mr. Havens. I did, however, offer to take input from you as counsel to the Havens entities, I also agreed to attempt to accommodate the requested 8/13 internal deadline proposed by Mr. Havens for me to circulate a first proposed draft, and I also stated I would consider the suggestions contained in Mr. Havens's email.

In response to a second email from Mr. Havens, I wrote to you explaining that I was not challenging Mr. Haven's position as a party in this proceeding, but rather refusing to deal directly with him, rather than through counsel, for the same reasons I previously stated.

When it became clear to me that I was unlikely to be able to circulate a draft by c.o.b. on 8/13, I sent you (and counsel for Pinnacle) and email advising of that fact. I then sent a proposed first draft before 10:00 AM on 8/14. I have since circulated two or three revisions, and have taken input from the Bureau and others. Given the foregoing communications making my position clear, I have assumed that you forwarded each of my communications, particularly the draft provisions, to Mr. Havens.

Despite the foregoing efforts to be as accommodating as I can under the circumstances, I have had absolutely no substantive response or input regarding the drafts I have circulated from you or Mr. Havens. Even now you are not offering meaningful input, but merely a complaint that I am somehow violated the procedures required by the judge's order. This issue has been on the table since August 8. You and/or Mr. Havens could have raised it with the judge at any time. Instead, you have waited until just hours before the filing deadline to present this demurrer to me.

Be that as it may, I respectfully submit that I have complied with the judge's order. The order required that I take input from Havens as a party, and that does not translate into an obligation that I deal directly with Mr. Havens as an individual. in referring to "Havens," the judge clearly meant the "Havens parties or entities" as a group, and not merely Mr. Havens as an individual. A contrary reading would require the conclusion that the judge intended to preclude the SkyTel entities from having any input. The judge certainly did not mean to elevate Mr. Havens as an individual to some special status, or to suspend his previous order and his repeated rulings on the record in prehearing conferences regarding the need for Mr. Havens and his entities to act through legal counsel. When all of this is coupled with the ethical considerations I addressed and Mr. Havens personal threats against me, I feel my position is fully justified.

--
Bob Keller < rjk@telcomlaw.com >
...

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Telesaurus VPC, LLC, a Delaware limited liability company, Plaintiff, vs. Randy Power, an individual; Patricia Power, an individual; Radiolink Corporation, an Arizona corporation; and commonly-controlled and affiliated entities, Defendants.	No. CV 07-1311-PHX-NVW **ORDER**

Before the Court is RadioLink's and Randy Power's Motion for Rule 11 Sanctions (Doc. 226). For purposes of this order, RadioLink and Randy Power will be referred to collectively as "RadioLink," unless the context requires otherwise. For the reasons discussed below, RadioLink's motion will be granted.

I. BACKGROUND

A. Genesis of This Dispute

In 1998, Telesaurus (a Delaware limited liability company, whose name has since been changed to Verde Systems) and RadioLink (an Arizona corporation) both participated in an FCC auction for certain radio frequencies in the Phoenix area designated as VHF Public Coast, or "VPC," frequencies. RadioLink withdrew from the auction before it concluded, and Telesaurus won the auction. RadioLink, however, soon gained access to the frequencies anyway by allegedly "submit[ting] to the FCC a false application . . . falsely characterizing [five of Telesaurus's VPC frequencies] as

frequencies in a certain pool of frequencies (very close in frequency range to the VPC Frequencies) that the FCC set aside for licensing at no charge, on a first-come, first-serve basis." (Doc. 120 ¶ 15.) RadioLink denied that it submitted a false application, and instead claimed that a frequency coordinator — a non-governmental entity that works as a sort of middleman for frequency applications — mistakenly selected the frequencies for RadioLink to request. In any event, the FCC did not realize that the requested frequencies were already assigned to Telesaurus, and it granted RadioLink's application. RadioLink began using Telesaurus's frequencies allegedly "for a common carrier Wireless Telecommunication Service and Commercial Mobile Radio Service." (*Id.* ¶ 16.) RadioLink disputed that it operated a commercial mobile radio service, instead arguing that it operated a private mobile radio service for customers such as fire departments and bus systems. The distinction between a commercial service and a private service matters because the FCC treats commercial services, but not private services, as "common carriers," 47 U.S.C. § 332(c)(1)–(2), and RadioLink's liability turns on whether or not it was a "common carrier."

Telesaurus apparently paid no attention to its VPC frequencies for several years, and had no idea that RadioLink was using them until 2003 or 2004. Administrative proceedings with the FCC ensued. In 2005, the FCC modified RadioLink's license to exclude Telesaurus's five frequencies and include five replacement frequencies.

B. Initial Stages and Appeal

Telesaurus initiated this lawsuit in 2007, alleging that RadioLink had used Telesaurus's frequencies without permission from 1999 through 2005, thus supposedly violating the common carrier provisions of the Federal Communications Act (FCA) and making RadioLink "liable to the person or persons injured thereby for the full amount of damages sustained in consequence of" the violations. 47 U.S.C. § 207. Telesaurus also asserted state-law claims for conversion, interference with prospective economic advantage, and unjust enrichment. According to Telesaurus's counsel at a later hearing, Telesaurus suffered no actual losses from RadioLink's actions, but rather sought damages

measured by RadioLink's profits from using the VPC frequencies, similar to equitable disgorgement:

> [The Court]: . . . [I]n concrete terms, what are your client's injuries and how do you credibly quantify them?
>
> [Counsel for Telesaurus]: Well, Your Honor, I mean, we have a potential, as we said, unjust enrichment case on the state law side, potential lost profits that my clients could have had.
>
> [The Court]: What's your — I mean, it's intuitively hard for me to see an unjust enrichment or loss of business. I thought your claim was about frequency interference that was degrading your client's business operation. Is that wrong?
>
> [Counsel for Telesaurus]: Yeah. I think it's more of a utilizing frequencies that they own.
>
> [The Court]: So it didn't interfere with your — it didn't interfere with your guy's communications through any of its customers?
>
> [Counsel for Telesaurus]: I don't believe so. I think based on my understanding from my client, no, that wasn't the issue.
>
> [The Court]: Okay. I guess I just assumed that when I read this that with two people using the same frequencies, that there's going to be interference and your communications don't go through and your customers get mad and they fire you. And none of that?
>
> [Counsel for RadioLink]: Different case, Your Honor.
>
> [The Court]: So this is just a matter of he made money and you want to get it from him?
>
> [Counsel for Telesaurus]: He utilized something that was ours.
>
> [Counsel for RadioLink]: They claimed they own the frequency. The FCC licensed the frequency to Radiolink. Radiolink uses the frequency. They say well, whatever

> money you made we're entitled to it. We don't agree with that theory, but that's their theory.
>
> [The Court]: This is changing my perception of this case. Because I thought your guy was suffering degradation of his own communications. But if it's just a matter of, I have a monopoly, you are using this frequency and I want all your profits, that's a different situation.
>
> So your damage case doesn't in any way — well, how would you come about your damage case?
>
> [Counsel for Telesaurus]: I think we would want to find out what the — what type of profits that they had made based on their use of the frequency, things like that. . . .

(Doc. 115 at 23–25.)

RadioLink eventually moved to dismiss the action, arguing that it was not a common carrier as a matter of law and therefore § 207 could not apply. RadioLink also argued that Telesaurus's state-law claims were preempted by federal law.

The Court granted RadioLink's motion, holding that the FCC's designation of RadioLink as a private mobile radio service (through the "PMRS" notation on RadioLink's license) was entitled to deference, and RadioLink was therefore not a common carrier as a matter of law. The Court also held that the FCA preempts the state-law claims. Given these outcomes, the Court concluded that "Telesaurus's stumble is not one from which it can recover and return to the race. It would be fruitless to let Telesaurus try again by allowing further amendment of its complaint. The complaint and the action will be dismissed with prejudice." (Doc. 91 at 9–10.)

On appeal, the Ninth Circuit upheld the state-law preemption conclusion, but not the common carrier conclusion, holding that the notation on RadioLink's license was entitled to no deference, and in any event, common carrier status turns on the services a licensee actually provides to its customers, not on what its license says. *Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1005–06 (9th Cir. 2010).

The Ninth Circuit's order therefore established the following elements for common carrier status:

> [A] mobile service provider such as RadioLink qualifies as a "common carrier" under the FCA only to the extent it is "engaged in the provision of a service" that is: (1) for profit; (2) interconnected (or pending interconnection) with the public switched network; and (3) available to the public or other specified users.

Id. at 1004. The Ninth Circuit went on to state, "Telesaurus's complaint plausibly alleges that RadioLink is a for-profit endeavor, thus satisfying [the first element of] the definition of the common carrier." *Id.* at 1005. The complaint, however, did not allege the second and third elements. Given that the Ninth Circuit's decision for the first time distilled those elements as such, the Ninth Circuit remanded to give Telesaurus an opportunity to amend as to those elements.

C. Between Appeal and Amendment

The Ninth Circuit announced its decision on October 8, 2010, and the mandate issued on January 5, 2011. (Doc. 118.) The following day, this Court gave Telesaurus 21 days (until January 27, 2011), to file an amended complaint. (Doc. 119.)

During those 21 days, Telesaurus's principal, Warren Havens, conferred with Telesaurus's counsel about the form of the amended complaint. Havens received the following advice from counsel:

> [U]ltimately we need to use the Ninth Circuit's decision as our road map for how we plead our 206-207 claims. In particular, we need to allege facts to support the allegations that Radiolink provided a service that was: (1) for profit; (2) interconnected (or pending interconnection) with the public switched network; and (3) available to the public or other specified users. The Ninth Circuit suggested in its decision that we properly pled the first element, so we really need to focus on the last two. This need not involve a lengthy factual exposition — 4-5 carefully worded paragraphs will do. As long as the allegations aren't conclusory, and have factual

> support, they ordinarily will pass muster for purposes of surviving a motion to dismiss.

(Doc. 248 at 3.) There is no indication that Telesaurus performed any investigation regarding the second and third elements.

D. Telesaurus's Second Amended Complaint

Telesaurus filed its second amended complaint on January 27, 2011, naming as defendants RadioLink, Randy Power (RadioLink's principal), and Patricia Power (Randy's ex-wife and former business partner). Telesaurus named Randy and Patricia Power because,

> [d]uring the period involved in this Complaint, as shown in public FCC records, and public advertising, and otherwise on information and belief, Defendants Mr. and Mrs. Powers [*sic*] held certain FCC licenses in their respective names, and jointly owned, controlled, and operated Radiolink as well as a number of differently-named wireless businesses as affiliates or DBAs of Radiolink. Upon information and belief, these businesses were operated as a common business enterprise and will be herein collectively referred to as "Defendants."

(Doc. 120 ¶ 4.) In other words, Telesaurus set up its complaint such that every action of every entity related to Randy and Patricia Power and their telecommunications business would be attributed to all of them.

Telesaurus then alleged the second element of the common carrier test — "interconnected (or pending interconnection) with the public switched network" — as follows:

> Defendants' Services utilize direct or indirect connections (through automatic or manual means) which permits the transmission of messages or signals between points in the "Public Switch Network" and a Commercial Mobile Radio Service provider, and, by such, Defendants' customers are capable of communicating to or receiving communications from other users of the Public Switched Network all or part of the time.

(*Id.* ¶ 8.) This simply repeats the regulatory definition of "interconnected." *See* 47 C.F.R. § 20.3. Telesaurus offered no specific facts to back up this assertion.

Telesaurus alleged the third element — "available to the public or other specified users" — in a similarly conclusory fashion:

> Defendants' Services are available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. Said availability utilizes generalized offerings on nondiscriminatory terms and fees to the public without restriction on who may receive such services.

(*Id.* ¶ 9.) This recites the statutory definition of "available to the public." *See* 47 U.S.C. § 332(d)(1).

E. RadioLink's Proposed Rule 11 Motion

On February 8, 2011, RadioLink served a Rule 11 motion on Telesaurus (*see* Doc. 226-1), but pursuant to Rule 11(c)(2)'s 21-day "safe harbor," RadioLink did not at that time file the proposed motion with the Court.

RadioLink's motion argued that Telesaurus's allegations in the amended complaint regarding elements two and three of the common carrier test were demonstrably baseless. RadioLink therefore asserted that Telesaurus had violated Rule 11(b)(3), which states:

> By presenting to the court a pleading, written motion, or other paper — whether by signing, filing, submitting, or later advocating it — an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> * * *
>
> . . . the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery . . . .

Included with the proposed motion was a declaration from Randy Power. (*See* Doc. 226-1 at 10–14.) In that declaration, Power specified in detail how RadioLink's repeater site does not have and has never had the necessary equipment to interconnect with the public switched network. He also asserted that RadioLink does not make and has never made its services available to the public, but instead provides contract service only to "internal dispatch" customers such as police departments, fire departments, school districts, and towing companies.

On February 9, 2011 (one day after RadioLink served its Rule 11 motion on Telesaurus), RadioLink filed a motion to dismiss Telesaurus's amended complaint. (Doc. 123.) The motion argued that Telesaurus's allegations in support of elements two and three of the common carrier test were no more than recitations of the applicable law, and therefore conclusory and incapable of sustaining the complaint. RadioLink alternatively moved for summary judgment based on (what the Court now knows is) the same Randy Power declaration attached to the proposed Rule 11 motion. (Doc. 124.)

F. Telesaurus's Response to the Proposed Rule 11 Motion

On February 16, 2011, counsel for Telesaurus e-mailed a letter to counsel for RadioLink. The letter offered in pertinent part,

> We have received and carefully reviewed your February 8 letter and associated proposed Rule 11 Motion, as well as your request that we dismiss Plaintiffs' Second Amended Complaint. We decline your request [to withdraw the second amended complaint] . . . .
>
> * * *
>
> Your Motion is premised upon the contention that Radiolink is not a common carrier, and, in particular, your assertion that Radiolink does not provide interconnected service. We dispute this contention, based upon the results of our investigations prior to the filing of our Second Amended Complaint.
>
> * * *

Our investigations revealed that defendant Randy Power (who as you may know is identified as the sole director and officer of Radiolink in filings with the Arizona Secretary of State) holds at least three active FCC licenses identified on their face as being associated with "interconnected" and "common carrier" service.

* * *

Our investigations also identified a number of other licenses obtained by Randy and/or Patricia Power, including common carrier forms under the name "Radiolink," described as associated with "common carrier" service and regulatory status, and which also appear to involve late-filed assertions of status changes. These or some of these licenses appear to be ostensibly no longer held by them, but held by them for at least part of the time period relevant to the Second Amended Complaint.

* * *

We had assumed that you were familiar with the section 208 Complaint (47 U.S.C. § 208 [which applies only to common carriers]) against Mr. Power that resulted in the FCC concluding all of the following:

- "We find that Power violated the terms of his [FCC] License by the *unauthorized carriage* of mobile traffic;"
- "We find that Power has carried mobile traffic *in violation of his license*, and thereby violated the Act and the rules."

* * *

With particular respect to Radiolink's common carrier status, we also note that Radiolink holds a license for a transmitter location at White Tank Mountain in Litchfield Park, Arizona, the very same location associated with Randy Power's active common carrier licenses. . . . Finally, our preliminary investigation has revealed that Radiolink has failed to obey certain basic corporate formalities (by failing to make required filings with the Arizona Secretary of State), which supports our allegation (in paragraph 4 of the Second Amended Complaint) that "Defendants Mr. and Mrs. Powers

> [*sic*] held certain FCC licenses in their respective names, and jointly owned, controlled, and operated Radiolink as well as a number of differently-named wireless businesses as affiliates or DBAs of Radiolink . . . *as a common business enterprise*."
>
> * * *
>
> [In light of the motion to dismiss's alternative request for summary judgment,] we would appreciate it if you would, by the end of this week, identify dates on which we can take the depositions of Randy Power, Patricia Power and a Rule 30(b)(6) representative of Radiolink, with the relevant documents produced in advance, directed to the current issues in dispute including: (i) the nature of the all of [*sic*] telecommunications operations of each of these persons/entities and time periods involved; (ii) the identity of the FCC licenses held by each of these persons/entities, and of the various licensing applications and pleadings involved, including drafts; (iii) the circumstances surrounding Defendants' application for these FCC licenses; (iv) the circumstances surrounding Radiolink's corporate existence, including its compliance with corporate formalities; (v) the identity of any Radiolink affiliates; and (vi) the nature of the telecommunications system operations, marketing, and services of Defendants and of any entities affiliated with any of the Defendants.

(Doc. 126 at 8–12 (emphasis in original).)

On February 18, 2011, counsel for RadioLink sent an e-mail to counsel for Telesaurus in response to Telesaurus's letter. In relevant part, RadioLink's counsel informed Telesaurus's counsel that RadioLink would not withdraw its Rule 11 motion and would not consent to the requested discovery:

> [A]fter reviewing all of the matters set forth in your letter, and giving full weight to your arguments, there is no legal or factual basis for the allegation that our clients are properly sued as a "common carrier" . . . and the unfiled Rule 11 Motion remains in effect.
>
> With respect to your request for discovery, our clients will respectfully decline. For reasons fully explained in Mr.

> Power's declaration, there is simply no factual basis for the assertion that RadioLink operates an Interconnected Service as defined in the applicable FCC Rule, and no amount of discovery can change that objective reality. Nor may a demand for discovery be premised on your alternative theories, which are based upon unsupported conjecture and innuendo and, indeed, demonstrate the extent of your client's failure to have conducted an appropriate pre-filing investigation.

(Doc. 248 at 26.)

G. Development of a Focused Discovery and Summary Judgment Procedure

Considering RadioLink's motion to dismiss/motion for summary judgment, the Court declined to move directly to summary judgment. Nonetheless, upon reviewing Randy Power's declaration in support of early summary judgment, the Court determined that Telesaurus's allegations were indeed conclusory but (a) the information needed to sustain them was conceivably entirely within RadioLink's control, and (b) Power's declaration showed that the viability of elements two and three could probably be easily tested.

At a hearing on the motion to dismiss/motion for summary judgment in April 2011, the Court stated that "those facts going to 'available to the public or other specified users,' or 'interconnected to the public switched network,' appear to be readily amenable to quick economical and definitive discovery and resolution." (Doc. 143 at 5.) The Court surmised that the parties "might need some depositions. But most of this would appear . . . to be paper discovery." (*Id.* at 17.) Referring to RadioLink's transmitter site, counsel for Telesaurus added: "I could envision a site inspection by an expert. I believe there's going to be some disagreement as to what the equipment can or can't do . . . during this five- or six-year period [in which RadioLink allegedly violated Telesaurus's rights]." (*Id.* at 18.)

Based on the discussion at the hearing, the Court denied RadioLink's motion to dismiss and instead ordered the parties to develop a discovery plan focused only on the

second and third elements of the common carrier test, to be followed by cross-motions for summary judgment on those elements. (Doc. 138.) The parties apparently attempted to develop a scheduling order but reached some sort of impasse (*see* Docs. 139–42), and the discovery plan lay dormant for several months as the parties litigated collateral issues (*see* Docs. 174, 175). A scheduling order was finally put in place in November 2011, requiring RadioLink to file a motion for summary judgment regarding interconnectedness and availability to the public. That motion was to include

> a written description in the form of a functional diagram of RadioLink's operating system during the period from 1999 through the time in 2005 when its frequencies were changed, with sufficient detail to allow a third party, including [Telesaurus]'s expert witness, if any, to determine whether the system was interconnected with the public switched network . . . .

(Doc. 189 at 2.) The scheduling order went on to specify:

> During January, 2012, (A) Defendants will permit inspections by duly qualified experts, at mutually convenient dates as follows: (i) Site inspection of RadioLink's [repeater] facility, and (ii) Inspection of RadioLink's repeater equipment in operation during the relevant time period, whether or not still operating; and (B) Plaintiff shall conduct the deposition of Randy Power at a date and time convenient to all parties, limited to the issues raised in Defendants' Motion for Summary Judgment. Plaintiff reserves the right to request additional discovery concerning the issues raised by Defendant's Motion for Summary Judgment pursuant to Rule 56(d) Fed.R.Civ.P. following its review of the Motion, and Defendants reserve the right to object to any such requests.

(*Id.*)

Telesaurus was required to obtain new counsel in the midst of summary judgment briefing, causing delays. In the end, Telesaurus deposed Randy Power, but "decided to forgo [an] inspection [of RadioLink's repeater site] since none of the equipment RadioLink used during the relevant time period remains at the site." (Doc. 223 at 2.)

Telesaurus cited nothing in support of the assertion that none of the relevant equipment remains in place.

II. ANALYSIS

A. Legal Standard

As noted above, Rule 11 imposes an obligation on parties to perform a reasonable inquiry before filing any paper, such as Telesaurus's second amended complaint:

> By presenting to the court a pleading, written motion, or other paper — whether by signing, filing, submitting, or later advocating it — an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> * * *
>
> . . . the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery . . . .

Fed. R. Civ. P. 11(b)(3). If a Rule 11 violation is found, whether to impose sanctions is within the Court's discretion. Charles Alan Wright et al., 5A *Federal Practice and Procedure* § 1336.1 (3d ed.) ("The 1993 amendment to Rule 11 returned the imposition of sanctions to the discretion of the district judge . . . .") (hereinafter, "*Wright & Miller*").

B. Timeliness

Telesaurus argues that RadioLink's motion is not procedurally proper because RadioLink served it in February 2011 but did not file it until May 2012. Rule 11, however, contains no deadline for filing a motion. A motion must not be filed within 21 days of its service on the opposing party, but the rule says nothing about how long the movant may wait to file the motion after the 21 day safe harbor has expired.[1]

[1] To give effect to the safe harbor provision, which permits a party to withdraw a supposedly offending paper, courts have held that service of the motion must take place such that the opposing party actually receives 21 days to withdraw the paper. Thus, for example, if the supposedly offending paper is a complaint and the Court dismisses that

Numerous courts have held that deciding an actually filed Rule 11 motion may be deferred until disposition of the case. *See, e.g., Lichtenstein v. Consol. Servs. Group, Inc.*, 173 F.3d 17, 23 (1st Cir. 1999); *Baker v. Alderman*, 158 F.3d 516, 521–22 (11th Cir. 1998); *Mitchel v. City of Santa Rosa*, 695 F. Supp. 2d 1001, 1013 (N.D. Cal. 2010); *In re New Motor Vehicles Canadian Export Antitrust Litig.*, 236 F.R.D. 53, 57 (D. Me. 2006). This case is materially indistinguishable from such cases. As the development of the focused summary judgment procedure demonstrates, had RadioLink filed its Rule 11 motion soon after the safe harbor period expired (which would have been during the pendency of RadioLink's motion to dismiss), the Court would have deferred deciding the motion for sanctions until resolving the motions for summary judgment resulting from the focused discovery. Accordingly, RadioLink's motion is timely.

C. Merits of the Motion

Telesaurus treated the Ninth Circuit's reversal on the leave-to-amend issue as an invitation to amend regardless of the substance of the amendment. From the Ninth Circuit's decision, Telesaurus understood the elements it must allege in its amended complaint, and it simply alleged them with nothing more. Telesaurus made no attempt to investigate whether those elements could be satisfied.

The fact that RadioLink denied the early discovery requested in Telesaurus's letter responding to the Rule 11 motion is of no consequence. "Rule 11 creates and imposes on a party or counsel an affirmative duty to investigate the law and facts *before* filing." *Moser v. Bret Harte Union High Sch. Dist.*, 366 F. Supp. 2d 944, 950 (E.D. Cal. 2005) (emphasis added).

1. Telesaurus's Claimed Justifications

In the Ninth Circuit, a complaint which *turns out* to be well-founded is not sanctionable even if it can be shown that the attorney failed to conduct a reasonable pre-

---

complaint during the safe harbor period, then no Rule 11 motion is possible because the party against whom it would have been brought can no longer withdraw the complaint. *See* 5A *Wright & Miller* § 1337.2. That is not the case here.

filing investigation. *In re Keegan Mgmt. Co. Sec. Litig.*, 78 F.3d 431, 434 (9th Cir. 1996) ("An attorney may not be sanctioned for a complaint that is not well-founded, so long as she conducted a reasonable inquiry. May she be sanctioned for a complaint which *is* well-founded, solely because she failed to conduct a reasonable inquiry? [¶] We conclude that the answer is no." (emphasis in original)).[2] But that is not the case here. Telesaurus produced nothing at summary judgment to substantiate any of the elements of common carrier status.

Moreover, Telesaurus failed to support the claims made in its letter responding to RadioLink's Rule 11 motion. Those claims were, at best, only indirectly relevant to the disputed elements of common carrier status. But in any event, as discussed below, each of them turned out to be baseless — further evincing bad faith.

a. Randy Power's Other Licenses

- "[D]efendant Randy Power (who as you may know is identified as the sole director and officer of Radiolink in filings with the Arizona Secretary of State) holds at least three active FCC licenses identified on their face as being associated with 'interconnected' and 'common carrier' service[.]"

This assertion is readily demonstrable, if true. At summary judgment, however, Telesaurus produced nothing to substantiate this assertion. It was not alleged in good faith.

- "[O]ther licenses obtained by Randy and/or Patricia Power, including common carrier forms under the name 'Radiolink,' described as associated with 'common carrier' service and regulatory status[.]"

At summary judgment, it became clear that Telesaurus based this allegation on certain FCC forms that Randy and Patricia Power allegedly filled out in 2001. As explained more thoroughly in this Court's order granting summary judgment (Doc. 224 at

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[2] *Keegan* essentially disagrees with the Third Circuit's Rule 11 maxim, "A shot in the dark is a sanctionable event, even if it somehow hits the mark." *Garr v. U.S. Healthcare, Inc.*, 22 F.3d 1274, 1279 (3d Cir. 1994) (internal quotation marks omitted); *compare Keegan*, 78 F.3d at 435 n.1 (disagreeing with the *Garr* approach).

11–12), Randy and Patricia Power separately filled out certain forms requiring them to characterize RadioLink's service by selecting from among fifteen possible categories. "Private mobile radio service" and "commercial mobile radio service" were not among the fifteen choices. The categories that the Powers ultimately selected do not necessarily imply anything about RadioLink's common carrier status or lack thereof. (*See id.*) Accordingly, this allegation did not provide a good faith basis on which to base the second amended complaint.

b. FCC Proceedings Against Randy Power

- "We find that Power violated the terms of his [FCC] License by the unauthorized carriage of mobile traffic; [¶] We find that Power has carried mobile traffic in violation of his license, and thereby violated the Act and the rules."

This quote comes from *In re Marzec*, 15 F.C.C. Rec. 4475 (2000). For some time, the FCC did not require base station operators (such as Power) to obtain FCC permission to carry mobile users because such users needed to obtain their own licenses. However, in 1992 the FCC reversed its policy, putting the burden on the base station operator to obtain a license if they intended to carry mobile traffic. Power had been carrying mobile traffic before the FCC rule change, and never sought to update his license after the change. His failure to do so led to conflict with another licensee on the same frequency, Franya Marzec. Marzec brought an enforcement proceeding in front of the FCC and prevailed in establishing that Power had carried unauthorized mobile traffic in violation of his license, although Marzec failed to establish that Power intended to cause harm through his actions. *See id.*

The only possible use Telesaurus could make of the *Marzec* proceedings is to draw an inference that one who has exceeded the scope of his FCC license previously did it again in this case. But in the context of this case, such an inference is not reasonable.

Telesaurus seeks to infer that Randy Power caused RadioLink to exceed its private mobile license by offering its services to the public at large, including telephone interconnection — thus making RadioLink a *de facto* commercial service, and therefore a

common carrier. However, one equipped to operate as a commercial service has no incentive to hide that fact. Rather, he has every incentive to hold himself out as such to the public — which itself should produce publicly available evidence. Telesaurus has produced no such evidence. Thus, any inference from the *Marzec* case does not rationally transfer to the circumstances of this case.

c. The White Tank Site

- "Radiolink holds a license for a transmitter location at White Tank Mountain in Litchfield Park, Arizona, the very same location associated with Randy Power's active common carrier licenses[.]"

Telesaurus produced nothing at summary judgment to support the assertion that Randy Power has active common carrier licenses operating from the White Tank Mountain site. Accordingly, there is no reason to believe this allegation was made in good faith.

d. RadioLink Corporate Formalities

- "Radiolink has failed to obey certain basic corporate formalities (by failing to make required filings with the Arizona Secretary of State)[.]"

Again, Telesaurus offered nothing to substantiate this. The allegation was not made in good faith.

2. Actual Course of Proceedings

The actual course of summary judgment proceedings further supports the conclusion that, from the start, Telesaurus had no reasonable basis to file the second amended complaint. Specifically, even after receiving an extension of time to do so, Telesaurus chose not to inspect RadioLink's repeater site, claiming that "none of the equipment RadioLink used during the relevant time period remains at the site." (Doc. 223 at 2.) Yet Telesaurus repeatedly claimed that the site continues to be used for common carrier operations, if only through Randy Power's other licenses, or through tenants. Such inconsistent positions evince a lack of good faith.

In addition, through its own efforts to uncover BLM records regarding RadioLink's transmitter site, Telesaurus learned the names of many of RadioLink's

current and former customers. (*See* Doc. 224 at 16.) Telesaurus's response letter to RadioLink's proposed Rule 11 motion shows that it was aware of the BLM records as of that time. (*See above*, Part II.C.1.c.) Telesaurus could have simply asked the customers revealed on these records how RadioLink solicited those customers' business (which is relevant to the third element of the common carrier test) and whether the customers ever had the ability to place a phone call through RadioLink's system (addressing the second element). Telesaurus's failure to pursue such obvious sources of relevant information further supports a finding of bad faith.

In addition, in its summary judgment briefs, Telesaurus repeatedly advanced an argument that the Ninth Circuit had rejected. The Ninth Circuit unmistakably held that common carrier status turns on the service the licensee actually provides:

> Telesaurus argues that Radiolink must be deemed to be a common carrier because it was using the VPC Frequencies, which the FCC designated for use only by commercial mobile services. We reject this tautology. As explained above, the definition of 'commercial mobile services' does not turn on the nature of the frequencies being used, but rather on whether the service being provided meets certain criteria.

Telesaurus, 623 F.3d at 1005. Nonetheless, Telesaurus adopted a more elaborate — although no less tautological — version of this argument as its primary basis for opposing summary judgment. (*See* Doc. 209 at 5–11; Doc. 223 at 3–7.) Telesaurus's attempt to resurrect the notion that RadioLink must be a common carrier because the disputed frequencies were allocated for common carrier use shows that, from the outset, Telesaurus justified this lawsuit purely based on its view of the law and not on any reasonable factual investigation. After the Ninth Circuit rejected the argument, Telesaurus's continuing reliance on it could not provide a good faith basis for pursuing this action further. Yet Telesaurus continued to litigate based on nothing more than labels and conclusions. Such behavior violates Rule 11. Telesaurus failed to perform "an inquiry reasonable under the circumstances" and to possess "evidentiary support" for its

factual contentions or to identify those contentions that would "likely have evidentiary support after a reasonable opportunity for further investigation or discovery." Fed. R. Civ. P. 11(b), (b)(3).

3. Telesaurus's Damages Theory

Telesaurus's damages theory sheds light on its bad faith in continuing this litigation after remand. From its own admissions at the outset of this case, Telesaurus did not have any actual damages compensable under 47 U.S.C. § 207. At best, only its already rejected state law claims might have provided a good faith basis to continue the litigation.

It has long been established that damages against common carriers under FCA §§ 206–07 are limited to actual damages incurred. For example, the FCC in 1965 faced a complaint from a telephone salesman who argued that the telephone company had routinely discriminated against him (in violation of its common carrier duties) by charging him for long-distance calls in a manner that did not accord with its posted rates and policies. *Barnes v. Ill. Bell Tel. Co.*, 1 F.C.C.2d 1247, 1247–51, 1259–60 (1965). The salesman tried to produce a measure of his damages but failed to do so with adequate certainty and therefore argued that his only burden was to prove that the telephone company discriminated against him. *Id.* at 1260–64. The FCC rejected this argument: "The fact that a complainant has shown that a common carrier has, by certain acts or omissions, subjected itself to . . . corrective proceedings by the [FCC] is not a basis for recovery of pecuniary damages without a showing of specific pecuniary injury." *Id.* at 1265.

In some cases, consequential damages can comprise sufficient injury. *See In re Edwards*, 74 F.C.C.2d 322, 327–28 (1979) (common carrier wrongfully refused to permit a certain telephone device to be installed on plaintiff's customer's premises; plaintiff incurred engineering expenses to convince the customer that the telephone device was permissible, and incurred interest on a loan taken out to cover for the customer's refusal to make payments on the device in light of the common carrier's actions; such damages

held recoverable). Loss of business one would have gained but for the common carrier's violations is also potentially compensable. *See RCA Global Commc'ns, Inc. v. W. Union Tel. Co.*, 521 F. Supp. 998, 1004 (S.D.N.Y. 1981) (common carrier carried certain traffic that it was required to allocate to other carriers instead; lost profits to other carriers held compensable).

Telesaurus, however, conceded early on that it lost no business, suffered no interference, and otherwise incurred no compensable expenses. Telesaurus simply wanted payment from RadioLink for "utiliz[ing] something that was ours." (*See above*, Part I.B.) Nothing in § 207 would support damages liability for RadioLink without damages in fact to Telesaurus.

D. Sanctions

A Rule 11 violation has been found. This Court therefore has discretion whether to impose sanctions. RadioLink's requested sanctions — attorney's fees and costs incurred fighting the second amended complaint — are "warranted for effective deterrence." Fed. R. Civ. P. 11(c)(4). Groundless, speculative litigation such as that exhibited by Telesaurus brings the legal system into disrepute and must be discouraged.

E. Remaining Issues

1. Status of Current Counsel

Nothing in this order should be construed as ascribing blame to Telesaurus's current counsel. Telesaurus's lead counsel first appeared in the middle of summary judgment proceedings. They were not involved in the decision to file the second amended complaint. Further, it appears that Telesaurus's local counsel (who have been involved from the beginning) performed no duties beyond the *pro forma* duties that often fall to local counsel. Accordingly, no fault is ascribed to local counsel.

2. Liability of Warren Havens

RadioLink has argued for personal Rule 11 liability against Telesaurus's principal, Warren Havens. Havens may have directed Telesaurus's actions, but he is not a party. RadioLink's argument therefore raises a veil-piercing issue that must be litigated

separately, if RadioLink chooses, after obtaining the judgment that this order will grant against Telesaurus. It is not an appropriate question to litigate in these proceedings.

IT IS THEREFORE ORDERED that RadioLink's Motion for Rule 11 Sanctions (Doc. 226) is GRANTED.

IT IS FURTHER ORDERED that the Clerk enter judgment in favor of Defendants RadioLink Corporation and Randy Power and against Plaintiff Telesaurus VPC, LLC, also known as Verde Systems, LLC, for attorney's fees of $107,797.50 and non-taxable costs and expenses of $5,346.02, with post-judgment interest at .019% from today's date until paid in full.

Dated this 24th day of August, 2012.

Neil V. Wake
United States District Judge

From: Warren Havens [mailto:warren.havens@sbcglobal.net]
Sent: Monday, January 23, 2012 1:20 AM
To: Marlene.Dortch@fcc.gov; Richard Sippel; Pascal Moleus; Mary Gosse; 'Patricia Ducksworth'
Cc: Albert J. Catalano; Charles A. Zdebski; Eric Schwalb; Gary Schonman; Harry Cole; Howard Liberman; Jack Richards; Jeffery Sheldon; Jimmy Stobaugh; Kurt DeSoto; Laura Phillips; Mark Griffith; Matthew Plache; Pamela Kane; Patricia Paoletta; Patrick McFadden; Paul Feldman; "rjk@telcomlaw.com"; Robert Guruss; Terry Cavanaugh; Wes Wright; "Miller, Robert"; Warren Havens
Subject: EB Docket No. 11-71. 1) Drinker motion to dismiss. 2) USDC action related to this FCC hearing.

EB Docket No. 11-71.
In the Matter of Maritime Communications/ Land Mobile LLC: Auction 61 and Assignment Applications.

To: Marlene H. Dortch, Secretary
Attn: Chief Administrative Law Judge Richard L. Sippel

1. Regarding the motion to withdraw filed by the Drinker Biddle law firm ("DB") and its supplement (the "Motion"):

DB is aware of the SkyTel position and requests in relation to the Motion.

SkyTel is in the process of obtaining procedural and substantive advice regarding the Motion and diligently seeking replacement counsel for good cause.

Until then, I do not believe I should substantively address this matter: I am not a lawyer, this is a formal hearing, and for other reasons. In addition, SkyTel's other legal counsel do not practice in FCC law matters.

I am of course willing to provide any information that you may require regarding Motion or other matters in this hearing.

As for the Maritime characterization of the Motion supplement, I believe it is diversionary. What is "grave" are the matters described in the HDO OSC, FCC 11-64 (the "HDO"), and Maritime evasion disclosing the required information. It has been close to 7 years for most of that, and longer for some (in the Mobex period). That is the cause of this hearing, and its current status. SkyTel was the entity that pursued the relevant facts, law and public interest since before auction 61 up to the release of the HDO: that is the basis of the HDO. In releasing the HDO, the Commission validated that pursuit (compare the HDO with SkyTel pleadings before the WTB including its still-pending Application for Review, which is not part of this hearing). The other parties have not contributed to the needed disclosures, but obviously engaged in due diligence leading to the HDO listed Applications. Also, see below.

2. Regarding Skybridge et al. vs MCLM et al, in US District Court, New Jersey:

The DB firm has not represented SkyTel in this case.
I take this opportunity to address the following as it is relevant to this FCC hearing.

See attached, in Havens et. al. v. Mobex et. al. (also styled as noted above), Civ. Action No. 11-993 in the US District Court, District of New Jersey. The court decided that SkyTel entities may proceed with their Sherman Act 1 case against Maritime and related entities, in denying Defendants' omnibus motion to dismiss that claim. (SkyTel is pursing that claim in both that court and in the bankruptcy court handling the Maritime bankruptcy. This may be consolidated. The claim is against MCLM and the other Defendants acting in concert for over a decade.)

The relation to this FCC hearing includes that if SkyTel entities prevail in that case, then the court may revoke the Maritime licenses. 47 USC §313. See US v RCA, 358 U.S., McKeon v McClatchy, 1969 U.S. Dist. LEXIS 10593.

Any such revocation is based on court jurisdiction apart from FCC authority and actions (US v RCA), including in this hearing and in any "Second Thursday" proceeding.

In addition, some parties in this FCC hearing may be involved in that court case, initially in the discovery phase for reasons apparent in the nature of the Sherman Act 1 claim as stated in the operative Second Amended Complaint. Copy at: http://www.scribd.com/doc/49192121/Skybridge-v-MCLM-PSI-USDC-NJ-2011-Amended-Complaint-Sc

If discovery in this court case as to any entities results in information that is also relevant to this FCC hearing, then SkyTel will make it available.

- - - - -
Filing and service:

I believe I am copying here all the Parties. If I find otherwise, I will correct that.

A copy of this will be timely filed in EB 11-71.

The SkyTel office will timely mail a hard copy of this email to your Honor's office, the Secretary, and the Parties at the addresses of record.
- - - - -

Sincerely,

/s/
Warren Havens
President
"SkyTel" Entities

Skybridge Spectrum Foundation
V2G LLC
Environmentel LLC
Verde Systems LLC
Telesaurus Holdings GB LLC
Intelligent Transportation & Monitoring Wireless LLC

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